IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 9355 of 1998

For Approval and Signature:

HON'BLE MR.JUSTICE AKSHAY H.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

GSRTC

Versus

RD DHAWAN

Appearance:

1. Special Civil Application No. 9355 of 1998

MRS VASAVDATTA BHATT for Petitioner No. 1

MR MUKESH H RATHOD for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE AKSHAY H.MEHTA

Date of decision: 19/02/2004

ORAL JUDGEMENT

The Gujarat State Road Transport Corporation [GSRTC] has approached this Court essentially under Article 227

of the Constitution of India, challenging the judgment and award of the Labour Court, Nadiad dated 3rd February 1998 passed in reference [LCN] No.63/88, whereby it has been directed to reinstate the respondent on his original post with continuity of service with 40% of back wages.

2. From the record, it appears that the respondent, who at the relevant time was serving as Conductor, at Khambhat depot of the petitioner was served with a chargesheet dated 5th February 1985 on the ground that he had misappropriated a sum of Rs.6440/=. Subsequently, the departmental proceeding in accordance with the Discipline and Appeal Rules was initiated and inquiry was held against him. It appears that thereafter the said amount was deposited by the respondent in three installments, namely one of Rs.2300/= on 16.1.1985, second of Rs.3640/= on 19.1.1985 and remaining amount of Rs.500/= on 25.1.1985. The charge pertains to the misappropriation that took place on 18.1.1984. In the inquiry, respondent pleaded that he had not committed any act of misconduct and charge levelled against him was without any basis. According to him, the charge-sheet was served on him only because he was office bearer of the union and the protected workman. On the conclusion of the inquiry, the inquiry officer found that the charge levelled against him was proved, and acting upon such finding, the Disciplinary Authority issued show cause notice to the respondent as to why his services should not be terminated. After receiving the reply and on going through the report of the inquiry officer and other relevant material, the Disciplinary Authority imposed the punishment of dismissal from service vide the order dated 10th June, 1998.

The dispute regarding dismissal, ultimately came to be referred to the Labour Court, at Nadidad for adjudication under Section 10 [1][C] of the Industrial Disputes Act [I D Act] by the Assistant Labour Commissioner vide the order dated 15.12.1988.

3. In the proceedings before the Labour Court, the respondent filed statement of claim, wherein he repeated the aforesaid averments and also contended that the necessary documents were not supplied to enable him to effectively defend his case. He has further averred that the statement of concerned persons were recorded in his absence and he was not afforded any opportunity to defend his case.

4. This reference was contested by the petitioner by filing the written statement at Exh.8. The say of the

petitioner was that the respondent had not deposited the amount of various blocks and had carried the said amount with him and he had thereby committed misappropriation of a sum of Rs.6440/=. Both the parties led their evidence before the Labour Court. The Labour Court, however, on the strength of material that was produced before it, came to the conclusion that the finding of the inquiry officer to the effect that there was misappropriation of the aforesaid amount, was perverse. However, it come to the conclusion that there was negligence on the part of the respondent, and he was required to be penalized. The Labour Court, thought it fit to quash and set aside the order of dismissal and instead directed the petitioner to reinstate the respondent on his original post with continuity of service. The Labour Court further thought it fit to award only 40% back wages, denying 60% back wages by way of punishment for the negligence shown by the respondent.

5. Ms.Vasavdatta Bhatt, learned advocate appearing for the petitioner has submitted that the misappropriation was committed by the respondent, as can be seen from the fact that he had deposited the amount later on in the year 1985. She has further submitted that looking to the past conduct, the respondent was required to be dealt with strictly and there was no reason for the Labour Court to upset the order of dismissal passed by the Disciplinary Authority. She has further submitted that even if the order of reinstatement is continued, the order with regard to payment of 40% backwages would cause considerable financial burden on the corporation, for no fault of its.

6. As against Mr.Rathod, learned advocate appearing for the respondent has submitted that there is a categorical finding given by the Labour Court to the effect that the finding of the inquiry officer was perverse and there was no misappropriation. However, he has further submitted that when the inquiry officer's finding has been set aside, there is no reason for this Court to interfere with the judgment and award of the Labour Court.

7. Having gone through the record of the petition and after considering the rival submissions, it clearly transpires that the respondent who was at the relevant time working as Conductor, at Khambhat depot, was charged with misappropriating a sum of Rs.6440/-. The fact that he had received this amount has not been denied by him. He has also not denied the fact that the said amount belonged to the Corporation and it was collected during

the sell of tickets. Though, faint attempt has been made by him to controvert this charge, there is no definite averment to the effect that he had never retained the amount with him. It is also clear from the record that the amount was for the period of January 1984 and February 1984. It also appears that the amount was deposited by the respondent in three installments in the month of January 1985. Thus, for almost one year, the amount was retained by him. If that be so, there is no doubt in my mind that for such retention of money, would amount to criminal misappropriation, as defined under Section 403 of the Indian Penal Code. It is very strange that on what basis the Labour Court has come to the conclusion that the finding of the inquiry officer was perverse and there was no misappropriation. In fact, whether it is for a temporary period or permanent, misappropriation remains misappropriation, if it has been done with dishonest intention. In the instnat case, it is an admitted fact that the amount was retained for a period of one year. Whether it has been retained with dishonest intention or otherwise, it was not required to be proved by the petitioner in the departmental inquiry, it not being a criminal prosecution. In light of this, the finding of the Labour Court that it was only on account of negligence the said act was done is perverse. One would fail to understand on what basis it has come to this conclusion. However, the petitioner has not thought it fit to prosecute the respondent for the act of misappropriation in appropriate criminal court and it has not produced any documents showing his past misconduct. The order of the Labour court with regard to the reinstatement in service, after a lapse of considerable time is not required to be disturbed, especially when pursuant to the said award, the petitioner has already been reinstated in service. However, so far as the payment of back wages to the extent of 40% is concerned, that order has to go because the same would certainly cause unnecessary financial loss to the petitionerCorporation, without any fault on its part. In view of the above, the petition is partly allowed. The order with regard to payment of 40% of back wages is quashed and set aside. However, the order with regard to the reinstatement is not disturbed as it was stated at the Bar by Mr.Rathod that the respondent was reinstated in service by the order dated 25.5.2000. It is made clear that the petitioner shall pay to the respondent salary between the date of award till the date of actual reinstatement. The petition is, therefore, partly allowed. Rule made absolute to the aforesaid extent only.

[AKSHAY H.MEHTA, J]

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